

The Director of Central Intelligence

Washington, D.C. 20505

Resource Management Staff

DCI/RM-78-4898

29 DEC 1978

Mr. Thomas K. Latimer, Staff Director
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Tom:

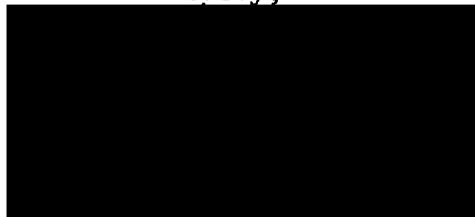
The attached report is provided in response to the Committee's request to the DCI, in its FY 1979 classified annex, for a report on the Intelligence Community's experience under the Freedom of Information Act.

It deals principally with the CIA where serious FOIA problems exist. The CIA report reinforces the concerns expressed in Admiral Turner's 13 March letter to Mr. Burlison, following his appearance before the Subcommittee on Program and Budget Authorization at the budget hearing of 7 March, and in other correspondence with the Congress on this subject from the DCI and senior officials of the CIA.

The current situation with respect to FOIA administration is of concern because of the constraints on resources and manpower which increasingly limit the Community's and the DCI's ability to respond adequately to priority foreign intelligence tasks.

The DCI's FY 1980 National Foreign Intelligence Program submitted to the President contained legislative and other recommendations for alleviating the FOIA problem, and the subject is expected to be addressed in the final budget provided to the Congress in January.

Sincerely,



STATINTL

Attachment:
a/s

STATINTL

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REPORT ON
INTELLIGENCE COMMUNITY EXPERIENCE IN
ADMINISTERING THE FREEDOM OF INFORMATION ACT

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INTELLIGENCE COMMUNITY EXPERIENCE IN
ADMINISTERING THE FREEDOM OF INFORMATION ACT

INTRODUCTION

In its FY 1979 classified annex, the House Permanent Select Committee on Intelligence expressed its intent to explore the problems inherent in the Intelligence Community's FOIA burden. The Committee requested the Director of Central Intelligence to provide a report on the Community's experience under the Freedom of Information Act, with particular reference to any legislative initiatives which he considered necessary.

The information in this report is intended to respond to the Committee's request and was assembled by the DCI's Resource Management Staff from material provided by Intelligence Community entities.

SUMMARY OF FINDINGS

The Intelligence Community's FOIA burden falls chiefly on the Central Intelligence Agency which has experienced serious problems in administering the Act since enactment of the 1974 amendments. The FBI is the only other organization within the Community which has had a similar experience; however, the FBI's FOIA problems are largely outside the scope of this report. Recent increases in the volume of requests received by the NSA/CSS are noted although it is too early to tell what the longer term impact will be.

In spite of efforts to improve efficiency and productivity, the CIA continues to experience a heavier volume of FOIA requests than it can handle with existing manpower. The backlog of requests currently stands at about 2,800, up from the 2,370 recorded at the close of 1977. And the decision in the Ray/Schapp case is expected to add to this backlog by increasing the time required to process each request.

The CIA believes it has just about reached the limits of the resources that can be diverted to responding to FOIA request without detracting seriously from its ability to carry out its foreign

intelligence mission, and points out that the public is not getting much for its tax dollar in this area. Many requests are for records concerning sensitive covert operations, the existence of which the Agency is not even free to acknowledge. Other requests require the search for and review of hundreds or thousands of pages of material, diverting manpower from other essential tasks, and resulting more often than not in the release of little more than fragmentary and sometimes inaccurate raw intelligence data. Under the current FOIA the Agency is even required to respond to the request from Philip Agee, a former CIA employee whose avowed goal is to expose CIA operations. It is estimated that as much as nine man-years may be expended on this case prior to its completion.

So long as the CIA's operational records are subject to the FOIA, there is the risk of unintentional exposure of sensitive intelligence sources and methods, which weighs heavily on the minds of those persons and foreign services upon whom the Agency must rely as sources of intelligence.

The CIA considers that legislative changes to remove sensitive operational data from the purview of the Freedom of Information Act are of highest priority. Such changes, while relieving the CIA from the most significant burdens of the FOIA, would not result in the withholding of much material which would otherwise be made available to the public.

REPORT ON THE CENTRAL INTELLIGENCE AGENCY'S EXPERIENCES
IN ADMINISTERING THE FREEDOM OF INFORMATION ACT
AND RELATED PROGRAMS - BURDENS AND OTHER PROBLEMS
RESULTING THEREFROM

1. Organization

The CIA's program for administering the Freedom of Information Act (FOIA), the Privacy Act (PA), and the mandatory classification review provisions of Executive Order 12065 (which superseded Executive Order 11652 on 1 December 1978) is decentralized, reflecting the decentralized nature of the Agency's records systems. Overall policy is determined by the Information Review Committee (IRC). This Committee is comprised of the Deputy Director for Administration (Chairman), the Deputy Director for Operations, the Deputy Director for Science and Technology, and the Deputy Director of the National Foreign Assessment Center. It is supported by the Information Review Committee Working Group (IRC/WG), established in May 1978, which includes, in addition to representatives of the above officials, members from the Office of Public Affairs, the Office of Legislative Counsel, and the Office of General Counsel.

The Information and Privacy Staff (IPS), located organizationally within the Office of the Deputy Director for Administration, is the focal point within the Agency for the receipt of requests from the public and is responsible for the coordination of their processing, the preparation of replies and other correspondence, and the maintenance of records of all transactions. The Office of the DCI, the National Foreign Assessment Center, and each of the Directorates has a person who serves as Freedom of Information officer, and, within these organizations, each major subcomponent has its own Freedom of Information officer (full-time or part-time, depending upon the workload). The program within the Directorate of Operations, however, is somewhat more centralized than is the case elsewhere in the Agency. That Directorate, which bears a significant share of the Agency's FOI/PA burden, has a rather sizeable central staff. All of the Directorate's contacts with IPS are through that staff, whereas the IPS usually deals directly with offices below the Directorate level in other parts of the Agency. Requests involving Intelligence Community Staff records or equities are processed through the CIA mechanism,

as well, and the Intelligence Community Staff has appointed a Freedom of Information officer to serve as its contact point with IPS.

2. Processing Procedures

Requests fall into two general categories--those received directly from members of the public and those referred to the CIA by other agencies. In the latter instances, searches are not usually required. We need only to review the records found by the referring agency in the course of searching its files. If the referred records are of CIA origin, we respond directly to the requester; if they are the records of another agency containing material falling under CIA's cognizance, they are examined and returned to the referring agency with our review findings for final disposition.

The paper flow in processing requests is depicted on the attached chart (Tab A). Requests are recorded in an automated request log by IPS and, once all questions have been resolved (fees, description of records, etc.), copies of the letters of request are sent to those components which might hold relevant information in their files. (In the case of referrals, copies of the referred records are sent to appropriate components for review.) All processing transactions are entered into the automated log. As soon as the components have completed their searches and reviewed any records found for releasability, the results are reported back to IPS. IPS takes care of whatever inter- and intra-agency referrals are deemed necessary and, when all processing has been completed, prepares responses to the requesters, transmitting copies of all documents being released in whole or in part, explaining the legal basis for withholding any information being denied, and informing the requesters of their right to administrative appeal. If denials are appealed, the information withheld is reviewed again, but by personnel not involved in the initial decisions. Working closely with a member of the Office of General Counsel, the reviewers prepare recommendations for the Deputy Director whose records are involved, and the Deputy Director, acting on behalf of the IRC, makes the final determinations. The results are transmitted to the appellant in a letter prepared in the Office of General Counsel, and he is apprised at that time of his right to judicial review.

3. Request Levels, Manpower Costs, and Fees Collected

Since the beginning of CY 1975, through 15 November 1978, the CIA has logged 19,504 requests, of which 10,030 were processed under the provisions of the FOIA. (See Tab B for a further breakdown on these requests.) We anticipate

receiving between 4,000 and 5,000 requests per year through FY 1983 barring some change in the law or in public attitudes vis-a-vis the Agency. Approximately 35-40 percent of these requests, judging from past experience, will be FOIA requests.

There are about 65-70 persons in the Agency who are employed on a full-time basis in complying with the demands of the FOIA, the PA, and mandatory classification review requests. Most of these full-time employees work in the Operations Directorate, IPS, the Office of General Counsel, or the Office of Security. In addition, hundreds of other Agency employees get involved in the programs on a part-time, ad hoc basis--conducting searches, reviewing records, etc. The total manpower expended each year is the equivalent of 110 or more full-time employees. This figure has tended to increase each year, caused in part by the increasing demands of appeals and litigation. Yet we believe that we have just about reached the limit of the resources that can be employed without detracting from our ability to carry out our foreign intelligence mission.

A great deal of manpower can be expended on individual requests, particularly if they go into the appeal and/or litigation stages. For example, we devoted 11.5 man-years to processing a single request for records pertaining to MKULTRA and other drug-behavior modification programs. Another request, for records dealing with John F. Kennedy's assassination, still in process, has already cost us some 8.75 man-years of labor. One officer has spent most of the last 17 months working on a request for records on individuals connected with the disappearance of Jesus de Galindez--and the processing of this request continues. We have expended nearly four man-years thus far on a request from Philip Agee, a former CIA employee whose avowed goal is to expose CIA operations, for records pertaining to him. We estimate that as much as nine man-years of labor may be required by the time processing of this request, which recently went into administrative appeal channels because of our inability to respond with the statutory deadline, is completed.

A recent opinion by the U.S. Court of Appeals for the District of Columbia Circuit (Ellen L. Ray and William H. Schaap v. Stansfield Turner) will have the effect of increasing the manpower needed to process FOIA requests, appeals, and litigation. The Court, in this case, required that agencies describe in considerable detail, on a deletion-by-deletion basis, the nature of the material being withheld under FOIA exemptions and the justification for its denial. Early

experience in complying with this new requirement indicates that it may take as much as one man-hour per document to satisfy it fully. Ironically, the new ruling will result in the disclosure of less information by the Agency than heretofore. Greater description will make more evident that which the CIA is statutorily bound to protect. The release of segregable portions of records, therefore, will not be feasible in those instances where the required descriptions and justifications of withheld material would destroy the very purpose of the withholding. Moreover, the possibility that any FOIA request may result in litigation, at which point detailed statements would be required, will often force upon the Agency a more conservative disclosure policy in responding to initial requests, despite the fact that only a few of these requests will ever reach the litigation stage.

Our personnel costs for administering these programs grow each year. We estimate the costs for 1975 at \$1,400,000; for 1976, \$2,000,000; and for 1977, \$2,377,000. Almost one-half of these sums can be attributed to the FOIA; FOIA requests tend to be more complex and are more likely to lead to expensive litigation. By contrast, very little has been collected in fees to offset these expenses. We do not charge for processing PA requests, and we are required by law to waive or reduce fees for FOIA requests whenever it is in the public interest to do so. Moreover, the most expensive part of the process--the review of records--must be totally absorbed by the Agency; we can charge only for searches and for the duplication of records. Only \$1,867 was collected in 1975; \$10,035 in 1976; and \$16,439 in 1977. All of these fees were for FOIA requests.

4. Efforts to Improve Efficiency and Productivity

Despite the considerable manpower diverted to these programs, we have been unable to keep up with the requests and large processing backlogs exist. Currently, there are approximately 2,800 unanswered requests and over 300 unanswered appeals. With rare exceptions, requests and appeals are handled on a first-in, first-out basis and, because of the backlogs, the statutory deadlines usually expire long before we can act.

The Agency has developed an active training program designed to further employees' knowledge of the Acts and to enhance their ability to deal with requests. Two-day workshops are conducted periodically to familiarize employees with the programs and to afford them an opportunity to review documents under controlled conditions. In addition, two Agency-wide

symposia have been held to discuss mutual concerns and to exchange ideas for the solution of problems. A weekly report on FOI/PA activities is also distributed throughout the Agency and a newsletter is published on an irregular basis.

A systems study has been underway which, utilizing data from the automated request log to create a computer model of the overall process, seeks to identify bottlenecks and other problem areas and to devise possible solutions. A greater degree of centralization will be among the alternatives considered in evaluating the collected data. There are, however, certain factors present which make greater efficiency difficult, or perhaps even impossible to achieve. Our files are decentralized and searches are therefore complex and often involve numerous systems of records. More important, however, is the sensitivity of most of the records contained in our files. Each document must be carefully and painstakingly reviewed by at least two levels of authority to ensure that intelligence sources and methods are not disclosed. The review cannot be done in haste and must be performed by fully qualified officers.

5. Problems

The two principal problems for the CIA in administering the FOIA and related public disclosure programs have been the drain on its manpower resources (with relatively little information being released of significant value to the general public) and the chilling effect that the fear of exposure has had on our agents and other sources and on various cooperating foreign intelligence and security liaison services.

The manpower we must devote to processing FOIA requests, which includes a not inconsiderable amount of time expended by senior Agency officials, obviously detracts from our ability to perform our critically important foreign intelligence mission. Moreover, a 2 percent personnel reduction projected for FY 1980 will make this diversion of manpower even more serious. We take no issue with the basic concept that the American public has a right to know what its Government is doing and to benefit therefrom whenever possible. Indeed, the Agency has, to the degree consistent with its obligation to protect intelligence sources and methods, voluntarily made its analytical products available to the public whenever feasible. Numerous unclassified monographs, reference aids, maps, and translations of the foreign media are released each year through the distribution facilities of the Library of Congress, the Government Printing Office, and the Department of Commerce. With respect to FOIA requests, however, it is clear to us that the public is not getting much for its tax dollar. Some of the requests

we receive are for records concerning sensitive covert operations, the existence of which we are not even free to acknowledge. No information is released, but manpower is nonetheless diverted from other essential tasks, particularly so if the denials are appealed or litigated. In other requests, the search for and review of hundreds or thousands of pages of material has more often than not led to the release of little more than fragmentary and sometimes inaccurate raw intelligence data, which, rather than enlightening the public, has sometimes resulted in highly publicized misinterpretations of what actually occurred. (More accurate reports responsive to the requests often had to be withheld to protect sensitive sources or collection systems.) On the other hand, we have been able to release a large number of finished intelligence studies, in whole or in part, without posing undue risk to intelligence sources and methods and to the benefit of American scholars and other researchers.

In an effort to counteract the erosion of confidence in the CIA's ability to protect secrets, we have repeatedly assured our intelligence sources that the exemptions afforded by the FOIA provide adequate protection--and, indeed, the inadvertent release of sensitive information has been exceedingly rare. However, as long as CIA operational records are subject to the FOIA there is always the risk of unintentional exposure (which has in fact occurred), and this weighs heavily on the minds of those persons and foreign services upon whom we must rely as sources of intelligence. It would be difficult to prove that information has in fact been withheld from the Agency as a consequence of those misgivings, but the apprehensions have been manifested on several occasions and a reluctance to entrust secrets to the CIA would logically follow.

6. Legislative Relief

We submit that the CIA, as a foreign intelligence service, is somewhat unique among U.S. Government agencies and that legislative relief from the risks and burdens posed by the FOIA is urgently needed. This relief could be achieved through a number of legislative vehicles. Formal proposals to this end will be forthcoming and Agency officials would welcome an opportunity to consult with members of the Committee as appropriate.

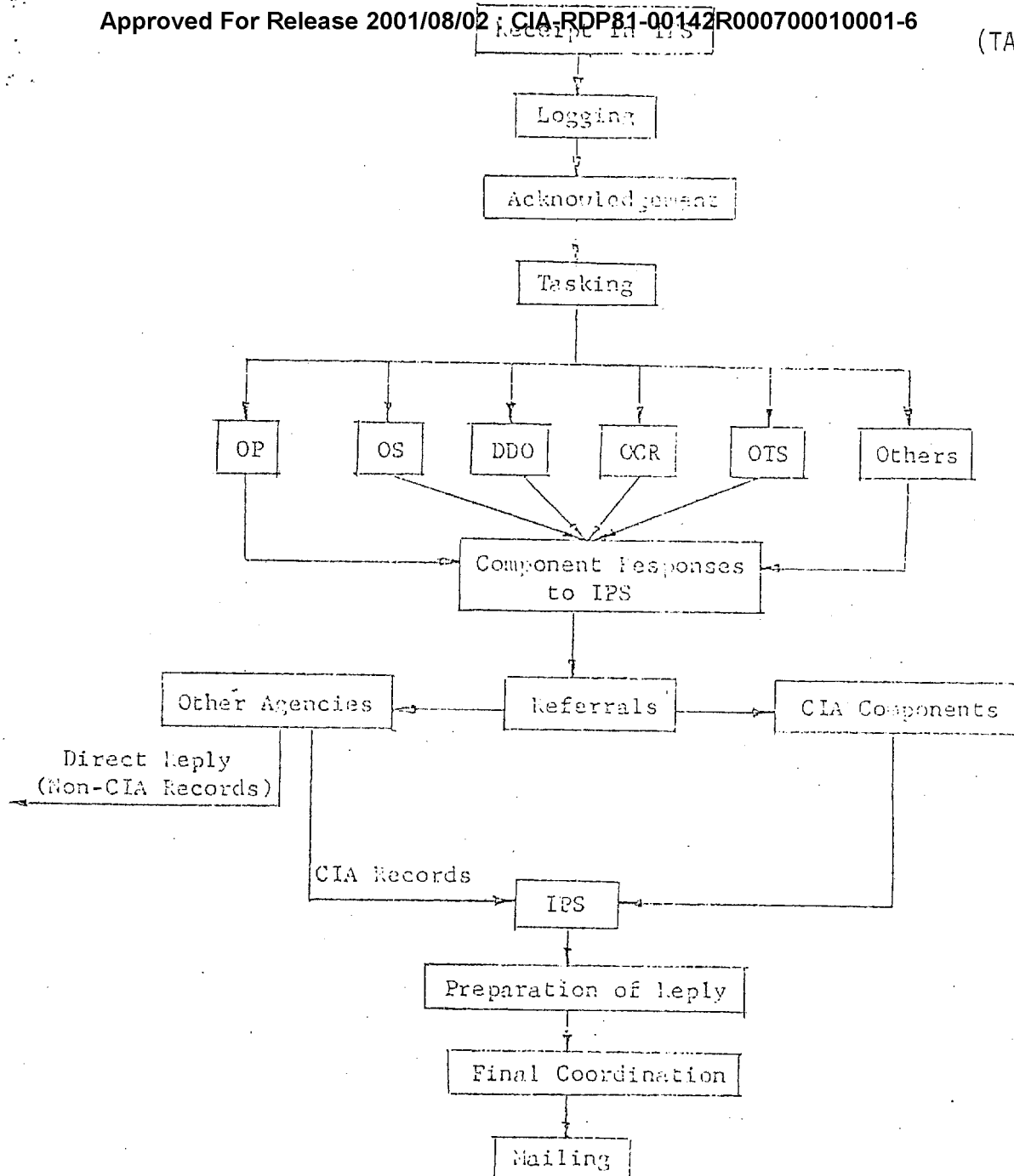
It is felt that total exemption from the FOIA is probably neither desirable nor feasible. However, we believe that the most sensitive information held by the Agency--including that concerned with or resulting from technical collection systems, espionage, covert operations, counterintelligence

activities, security investigations, intelligence and security liaison arrangements, and internal organizational and budgetary matters--should be made unreachable under the FOIA. If possible, we would also like to have raw, unevaluated intelligence reports and cables--as contrasted with finished intelligence studies and estimates--exempted from the access provisions of the FOIA. Most of the information described above is already covered by the existing exemptions of the FOIA. The public would thus not be denied any significant amount of information which would not now be withheld in any event under the current FOIA exemptions, but the CIA would be spared the necessity of using its scarce manpower going through the legally mandated motions of searching its many files, carefully reviewing relevant documents, and defending its denials through administrative appeal and litigation stages. Even more important perhaps, we would be in a position to assure our sources that records revealing their collaboration with the Agency would not be subject to FOIA requests, thereby eliminating the risk of inadvertent disclosure.

The above results could be achieved through legislation describing or listing certain systems of records held by the CIA which are exempt from the publication or disclosure provisions of any other law. Another approach might be to exempt the CIA from the requirement of searching its files when the subject of an FOIA request pertained to specified categories of sensitive information or types of sensitive records. The potential manpower savings to the Agency would be difficult to estimate at this time. Fewer searches would be required, but CIA-originated records of an operational nature and third agency records affecting CIA's equities would still be surfaced by other agencies in responding to FOIA requests and would therefore have to be dealt with by the CIA. It is certain, however, that the resources required of us to process FOIA requests received directly from members of the public would be appreciably reduced.

In previous communications to the Committee, CIA officials have questioned whether other provisions of the FOIA were not in need of change. These provisions included the right of foreigners to submit FOIA requests, the short deadlines for responding to requests and appeals, the prohibition against charging fees for reviewing documents, and the lack of any restrictions over the scope of requests. We continue to believe that these provisions warrant reconsideration by the Congress. Legislative changes to remove sensitive operational data from the purview of the Act, however, are of far greater importance to the Agency and should be given priority.

(TAB A)



REQUEST STATISTICS

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u> (thru 15 Nov)
<u>FOIA</u>				
Requests received	6609	761	1252	1406
Granted in full	300	148	167	161
Granted in part	428	562	241	251
Denied in full	174	122	95	114
Misc.*	4577	523	269	587
<u>PA</u>				
Requests received	552	2356	3023	1978
Granted in full	4	154	195	169
Granted in part	3	404	520	469
Denied in full	0	56	124	115
Misc.*	189	1500	1559	1116
<u>EO</u>				
Requests received	232	374	568	398
Granted in full	63	81	156	61
Granted in part	88	220	268	93
Denied in full	28	37	101	22
Misc.*	5	6	11	12
Total requests rec'd	7393	3491	4843	3782

*Misc. category includes "no record available" and "no CIA record available" responses; canceled and withdrawn requests; requests referred to other agencies; early appeals; etc.

THE FEDERAL BUREAU OF INVESTIGATION'S EXPERIENCE
IN ADMINISTERING THE FREEDOM OF INFORMATION ACT

In the first three years under the amended FOIA the FBI was inundated with more than 48,000 requests. Its small staff was unable to cope and a sizeable backlog quickly developed which had reached 8,599 unanswered requests by July 1976, with processing delays of up to twelve months. Beginning in late 1976, the FBI made a special effort to reduce this backlog and improve the time required to process requests.

A large number of special agents were reassigned from field offices to FBI headquarters to work on FOIA. For a time there were more people assigned to FOIA activities at FBI headquarters than were on the staffs of 51 of the Bureau's 59 field offices. The backlog was substantially reduced but at a high cost -- \$9.2 million and 365 full time people in FY 1977 alone plus 282 special agents temporarily assigned to eliminate the backlog. Unfortunately, with the return of the special agents to their regular assignments, and in spite of improved processing methods, the backlog is beginning to build up once more.

The FBI is centrally organized to respond to FOIA requests. Only a small percentage of the FOIA requests relate directly to the Bureau's Foreign Counterintelligence (FCI) responsibilities other than the Communist Party, USA, and no FOIA costs are included in the FBI's FCI budget within the NFIP. Nevertheless the potential adverse impact on the FBI's overall FCI program is significant, particularly with regard to possible detection of sources.

The FBI foresees no reduction in its heavy FOIA workload, and indeed believes it will continue to increase as it has in each of the last three years. In addition to its concern with the cost of processing these requests, the FBI has become increasingly alarmed over the effect the Freedom of Information and Privacy Acts have had on the Bureau's ability to carry out its basic mission -- specifically the possibility that hostile foreign and criminal elements may be able to pinpoint FBI sources through a careful examination of seemingly innocuous but related documents. The FBI is considering several proposals designed to achieve a better balance between public disclosure and effective law enforcement, including preservation of national security interests.

Additional information on the FBI's overall experience with FOIA is contained in the attached extract from the Comptroller General's Report to the Congress of April 10, 1978.

BY THE COMPTROLLER GENERAL

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Report To The Congress OF THE UNITED STATES

Timeliness And Completeness Of FBI Responses To Requests Under Freedom Of Information And Privacy Acts Have Improved

The Freedom of Information Act and the Privacy Act require Federal agencies upon request to produce information from their records.

Inundated with almost 48,000 requests in 3 years, the FBI has made progress since the fall of 1976 in improving the completeness and timeliness of information it provides. Various problems, however, continue to hamper FBI efforts to effectively comply with requests.

GAO recommends that the Congress modify the legislation and that the Attorney General improve management procedures.



GGD-78-51

APRIL 10, 1978

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-179296

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the Federal Bureau of Investigation's efforts to comply with the Freedom of Information and Privacy Acts. Although the Bureau has made great progress in implementing the acts, further management improvements are needed to make the Bureau more fully responsive to information requests. Recommendations are made to the Attorney General and to the Congress.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67). A special interest in the review was expressed by various members of the House Subcommittee on Civil and Constitutional Rights and of the House Subcommittee on Government Information and Individual Rights.

We are sending copies of this report to the Director, Office of Management and Budget; the Attorney General; the Director, Federal Bureau of Investigation; the Administrator, Drug Enforcement Administration; and the Secretary of the Air Force.

A handwritten signature in dark ink, reading "Elmer B. Staats", is positioned above the title of the official.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

TIMELINESS AND COMPLETENESS
OF FBI RESPONSES TO REQUESTS
UNDER FREEDOM OF INFORMATION
AND PRIVACY ACTS HAVE IMPROVED

D I G E S T

Requests for information under authority of the Freedom of Information and Privacy Acts have created large workloads for various Federal agencies, but especially the FBI. It has received almost 48,000 requests in 3 years. Since 1975 the FBI has had a sizable backlog of requests. Although the FBI has improved the completeness and timeliness of its responses, it can do more in this regard.

FREEDOM OF INFORMATION AND
PRIVACY ACTS

The Freedom of Information Act, effective July 4, 1967, directs that the public must have access to the information in the files of executive branch agencies, with certain exceptions specified in the act. Because of dissatisfaction with the way the act was being implemented, the Congress amended it, effective February 19, 1975, to

- limit the Government's authority to withhold certain kinds of information;
- strengthen the public's right to obtain information from Federal Government records; and
- speed public access to Federal Government records. (See p. 2.)

As a result of the amendments, agencies are now required to respond to the requester within 10 working days. The FBI has not been able, however, to comply with the

10-day requirement because the sensitive nature of the information in its files requires a line-by-line review to insure that only appropriate disclosures are made.

The Privacy Act, approved December 31, 1974, primarily deals with protecting an individual's personal privacy and providing an individual the opportunity to review, obtain and amend a copy of his or her record maintained by a Federal agency. (See p. 2.)

The Freedom of Information and Privacy Acts contain general guidance on what information can be released under their disclosure and exemption provisions. Subjective judgments result, which allow a wide disparity in agency and individual decisions on what information can be released.

FBI HAS MET AN INCREASING NUMBER OF REQUESTS

The FBI believes its heavy request workload will not only continue but will increase at an annual rate of about 14 percent. On this basis, it estimates that it will receive about 20,500 and 23,400 requests in 1978 and 1979, respectively.

To accommodate this increasing demand for information, the FBI has had to improve its organizational structure and processing procedures. Initially, the FBI handled Freedom of Information and Privacy Act requests with a small staff and processed requests in a fragmented and ineffective manner. This resulted in the slow processing of requests, development of a substantial backlog (8,599 in July 1976), and processing delays of about 12 months. (See p. 4 and ch. 4.)

The FBI took steps to improve its responsiveness in 1976 by making certain organizational and processing changes. This has been costly; \$9.2 million and 365 people were devoted to Freedom of Information Act and Privacy Act activities in fiscal year 1977. As a result of the changes made, more people were assigned to these activities at headquarters than were on the staffs of 51 of the Bureau's 59 field offices. The branch handling the requests was larger than six of the eleven headquarters divisions excluding its own division.

Although the improvements to date are noteworthy, additional management and legislative actions are needed to allow the FBI to respond more quickly and fully to information requests.

RECOMMENDATIONS

GAO¹ recommends that, to improve the management of information disclosure activities, the Attorney General require

- the FBI to reduce the drain on its investigative resources by using analysts instead of special agents to supervise the processing of requests;
- the FBI and other Department components to be more responsive to requesters by providing additional information on items such as the number of pages in a file, the number of pages denied, and by noting on each document the exemptions used to withhold information;
- the FBI and other Department components to avoid the practice of charging fees in those cases where billing costs exceed the charges assessed;

Tear Sheet

--the Office of Privacy and Information Appeals to reduce inconsistencies in the amount of information released by improving guidelines and oversight of the process.

GAO also believes that a legislative change is needed and recommends that the Congress change the time requirement for FBI responses to Freedom-of-Information-Act requests. GAO believes that the law should require the FBI to acknowledge an initial request within 10 working days and provide a full response within an additional 30 working days. In situations, however, where such a timeframe is unreasonable in view of the quantity of material to be reviewed, the FBI shall provide the requester with a firm fixed date for delivery of its response.

If the requester considers this date unreasonable, he may, according to the law, bring suit to compel an earlier delivery. In reaching decisions on such suits, the courts should give due consideration to the possible adverse impact of a directed earlier response on the FBI's ability to service the demands of other requesters, premised on a finding that the FBI is devoting a reasonable level of resources to these activities.

AGENCY COMMENTS

The Departments of Justice and Air Force agreed, except for certain minor issues, with the information presented in this report. GAO has recognized their views in the appropriate sections of this report. (See pp. 31, 53, and 57.)

NATIONAL SECURITY AGENCY/COMMUNICATIONS SECURITY SERVICE
EXPERIENCE IN ADMINISTERING THE FREEDOM OF INFORMATION ACT

During the first three years under the amended Freedom of Information Act, the NSA/CSS had a relatively low volume of FOIA requests in comparison to the FBI or the CIA. In CY 1977, for example, the total number of requests processed was 485. This figure actually was somewhat inflated due to MIA requests (requests from relatives of persons missing in action in Southeast Asia). The MIA requests which began part way through 1977 and continued into 1978 numbered 250 in all and represented, for the NSA/CSS, an extraordinary item which temporarily increased its workload appreciably.

FOIA costs reported by the NSA/CSS in CY 1977 were \$574,120 and an estimated 6.0 man-years. Projected costs for the FY 1979-1983 period were estimated in September to be \$3,125,000 or approximately \$625,000 per year, not including probable inflation factors and assuming no significant increase in workload. More recent statistics suggest this projection may be somewhat conservative. According to projections compiled in October, the NSA/CSS will receive approximately 700 FOIA requests this year. If this trend continues, 1978 volume will be approximately 70% more than last year's total. In addition to the increase in volume of requests, the NSA/CSS is finding that the complexity of requests has increased as well.

The NSA/CSS is becoming more and more concerned about its capability to protect highly classified information from public disclosure as a result of the uncertain state of the law in the District of Columbia Circuit regarding exemptions under 5 U.S.C. Section 552(b) (1) and 5 U.S.C. Section 552(b) (3) and the increasingly demanding requirements for detailed descriptions in the public record of documents being withheld.

OTHER INTELLIGENCE COMMUNITY EXPERIENCE IN ADMINISTERING
THE FREEDOM OF INFORMATION ACT

No other Intelligence Community organization reported difficulty in administering the Freedom of Information Act. Volume of activity ranged from zero as reported by the intelligence component of the Department of the Treasury to an estimated 1,205 requests processed by DIA in FY 1978.

Comparable data on the FOIA activity of the intelligence elements of the military services was not available because of the different ways in which the Departments administer their FOIA programs. Army intelligence estimated its FOIA costs for FY 1978 to be \$178,741 and 956 requests processed; Navy intelligence advised that its FOIA requests are handled by reservists and are not funded in Program 3; Air Force reported that its statistics are compiled separately by each Air Force command and separating out the GDIP portion would require considerable effort and expense.

DoD FCI Components do not maintain FOIA records in such a way as to identify levels of activity specifically attributable to the FCI program; FOIA records are maintained on an organizational basis and not by function.

The overall cost of administering the FOIA program within the Department of Defense is shown on the attached chart, reproduced from the Department of Defense Summary Report to the Congress on FOIA for FY 1977.

INR/State reported it has one officer and one assistant working on FOIA and other declassification review cases, devoting approximately 80 and 40 percent of their time respectively.

FOIA requests to the Department of Energy are handled by a central FOIA office and, while FOIA staff is not accounted for within the DOE intelligence submission, intelligence resources are used when requests are referred. Last May DOE intelligence expended a full man-week of effort in processing the NUMEC case, but otherwise the time required to process requests has not been significant.

Requests involving Intelligence Community Staff records or equities are processed through the CIA mechanisms.

COST OUTLINE	REPORTING ACTIVITIES						
	OSD/JCS	ARMY	NAVY	AF	DCA	DCAA	DIA
I. Routine Requests Processed (No. of requests x cost factor)		5,925		9,986			
II. Personnel Costs*							
A. Estimated manyears	15.04	62.02	15.52	92.88		1.11	2.56
B. Cost of manyears (grades considered)	381,827	1,012,582	311,506	946,746		35,803	93,142
C. Cost of estimated manhours by category (fee schedule rates)							
(1) Search time	12,055	48,764	40,927	53,430	386	1,862	7,677
(2) Review & excising	16,007	22,947	36,057	68,591	94	6,572	2,755
(3) Coordination & approval	6,597	35,441	48,638	97,117	-	7,332	1,826
(4) Corres. & Form prep.	1,199	9,778	19,999	29,368	164	1,006	152
(5) Other activities	1,918	10,118	22,879	37,836	-	2,412	12,171
(6) Manhour cost total	37,776	127,048	168,500	286,342	644	19,184	24,581
D. Total of IIB and IIC	419,603	1,139,630	480,006	1,233,088	644	54,987	117,723
E. Overhead rate (25%)	104,901	284,908	120,027	308,273	162	13,746	29,431
F. Total of other costs	524,504	1,424,538	600,033	1,541,361	806	68,733	147,154
III. Other Case Related Costs							
A. Computer Search Time Costs	1,062	7,818	4,978	7,790	25	91	-
B. Reproduction Costs	1,510	45,040	32,055	24,703	91	110	750
C. Microfiche Reproduction	1	748	2,214	1,546	107	-	-
D. Cost of Printed Records	593	2,929	2,272	10,679	-	-	1,400
E. Total of Other Costs	3,166	56,535	41,519	44,628	223	201	2,150
IV. A. Reporting Costs							
(1) Operational	550	25,769	9,932	23,459	-	1,223	50
(2) User	850	1,646	5,225	418	-	-	30
(3) Overhead (25% of (1) & (2))	350	6,853	3,789	5,968	-	306	20
B. Other operating costs (voluntary re- porting of items such as postal, travel, computer, etc.)	19,928	23,754	1,447	12,508	-	-	100
C. TOTAL	21,678	58,022	20,393	42,353	-	1,529	200
V. Summary							
A. Total costs of I-IV	549,348	1,545,020	661,945	1,638,328	1,029	70,463	149,504
B. Amount collected from public	1,996.20	84,083.94	39,174.69	59,830.00	652.71	695.05	1,231.00

* These costs reflect general estimated amounts associated with processing public requests. Individuals involved in request processing are given the option of recording the time spent as a percentage of available hours (each 120 days) or on an hourly basis per request. The manyear statistics should not be construed to mean number of people devoted exclusively to the FOI program in each agency.

REPORTING ACTIVITIES

COST OUTLINE	DIS	DLA	DMA	DNA	NSA	DCPA	TOTAL
I. Routine Requests Processed (No. of requests x cost factor)							15,911
II. Personnel Costs *							
A. Estimated manyears	.019	9.86					205.009
B. Cost of manyears (grades considered)	268	181,307			6.0		3,091,167
C. Cost of estimated manhours by category (fee schedule rates)					127,986		
(1) Search time	179	12,344	26	209	51,462	787	230,108
(2) Review & excising	592	7,979	-	303	3,831	77	165,805
(3) Coordination & approval	384	16,334	61	233	-	998	214,961
(4) Corres. & Form prep.	96	8,520	-	185	-	69	70,536
(5) Other activities	164	4,085	904	185	-	400	93,072
(6) Manhour cost total	1,415	49,262	991	1,115	55,293	2,331	774,482
D. Total of IIB and IIC	1,683	230,569	991	1,115	183,279	2,331	3,865,649
E. Overhead rate (25%)	422	57,632	247	-	45,819	582	966,150
F. Total of other costs	2,105	288,201	1,238	1,115	229,098	2,913	4,831,799
III. Other Case Related Costs							
A. Computer Search Time Costs	143	14,097	-	-	343,840	-	379,754
B. Reproduction Costs	60	6,384	53	20	531	49	111,356
C. Microfiche Reproduction	-	250	-	-	14	-	4,880
D. Cost of Printed Records	-	7,546	167	-	-	5	25,591
E. Total of Other Costs	203	28,277	220	20	344,385	54	521,581
IV. A. Reporting Costs							
(1) Operational	40	5,526	222	44	258	77	67,150
(2) User	3	655	75	-	252	-	9,154
(3) Overhead (25% of (1) & (2))	11	1,543	75	12	127	8	19,062
B. Other operating costs (voluntary re- porting of items such as postal, travel, computer, etc.)	-	1,216	-	-	-	-	58,953
C. TOTAL	54	8,940	372	56	637	85	154,319
V. Summary							
A. Total costs of I-IV	2,362	325,418	1,830	1,191	574,120	3,052	5,523,610
B. Amount collected from public	5.65	38,692.00	245.17	21.00	14.00	34.18	226,675.59

29 DEC 1978

MEMORANDUM FOR: DDCI

FROM: D/DCI/RM

Attached please find a copy of the report on the Community's experience with FOIA which was requested of the DCI by the HPSCI in its FY 1979 classified report. It seemed preferable to forward the report over my signature rather than the DCI's since current budget issues are involved and we want to keep the DCI's options open. I understand the DDA has already mentioned this report to you.

STATINTL

Attachment:
a/s

Distribution:

orig - addressee

- ① - AI/DDA
- 1 - D/DCI/RM
- 1 - RM Registry
- 1 - CLLO chrono
- 1 - CLLO(Murrin)

STATINTL
STATINTL

D/DCI/RM/CLLO/ [REDACTED] /akk(28Dec78)

STATINTL

TRANSMITTAL SLIP		DATE	12/29/78
TO		A1/DDA	
ROOM NO.	BUILDING		
7D18	HQS		
REMARKS:			
<p>Here's your official copy - also a copy of the note John sent to the DDCI, responsive to your request to me</p> <p><i>[Signature]</i></p>			
FROM:		CLLC	
ROOM NO.	BUILDING	EXTENSION	
BW09	CHB		
FORM NO. 241 1 FEB 55		REPLACES FORM 36-8 WHICH MAY BE USED. FOIA (47)	

STATINTL